

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.59.302 pertaining to schedule of ) AMENDMENT  
charges for consumer loans )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On April 4, 2013, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on March 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.302 SCHEDULE OF CHARGES (1) Every applicant for license under the Montana Consumer Loan Act shall file with the commissioner in duplicate, at the time of filing an application for ~~such a~~ license, a full and accurate schedule of all charges, fees, ~~and costs~~ rate(s) of interest to be exacted in connection with any and all loans to be made by ~~such the~~ applicant and the method of computing the same.

(2) Licensees shall thereafter maintain on file with the commissioner in duplicate a current schedule of all charges, fees, ~~and costs~~ rate(s) of interest to be exacted in connection with all loans to be made by ~~such the~~ licensee and shall not exact charges, fees, ~~or costs~~ rate(s) of interest in excess of those contained in the schedule.

(3) Licensees shall display ~~such the~~ schedule, which shall include examples of principal, ~~add-on charges~~ rate(s) of interest, monthly payments, and the contract period covered, prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

(4) Licensees ~~shall~~ may not make loans without ~~such~~ having the schedule ~~being~~ displayed.

(5) Licensees operating more than one licensed location in Montana shall advise the commissioner at which location or locations each ~~such~~ schedule is to be used, if there ~~be~~ is more than one schedule.

(6) Licensees shall observe the following definitions and procedures in computing charges interest:

~~(a) a calendar month is that period of time from one date in the month to the corresponding date in the next month. If there is no corresponding date, then the last date of the next month will be used.~~

~~(b) the term "month" as used in the Act and in this regulation shall mean calendar month;~~

~~(c) (a) charges interest shall be computed at the applicable rate on the amount of the loan from the date of the loan to the due date of the final installment irrespective of the fact that the loan is payable in installments balance of the loan from the date of the previous payment to the date of the following payment; and~~

~~(d) (b) licensees shall compute monthly charges for a period of less than one year at 1/12th of the annual rate for each month; interest using a 365-day year, or in the case of a leap year a 366-day year, and by counting the actual number of days from one payment to the next.~~

~~(e) licensees shall compute daily charges for a period of less than one month at 1/30th of 1/12th of the annual rate for each day;~~

(7) Licensees shall not fix the due date of the first installment on any loan contract providing for monthly installments, for a term exceeding 45 actual days from the date of loan.

~~(a) When the first payment on any such contract may be due on a date beyond a calendar month as defined above, licensees will be permitted to make an additional charge for the number of days in excess of 30 or of one calendar month from the date of loan, whichever is less.~~

~~(b) The number of days in excess will be at the daily rate for actual number of days.~~

~~(8) Licensees shall compute prepayment refunds under the rule of 78ths:~~

~~(a) Licensees may disregard any earned charge made for an extended first payment. (e.g. if a 10-day first payment extension charge was made, the charge becomes earned with the elapse of the 10 days.)~~

~~(b) When any loan contract is prepaid after the first scheduled installment date by cash, a new loan, renewal, or otherwise, on other than scheduled dates, licensees shall elect to use either the 15-day rule or a daily basis to compute the refund due.~~

~~(i) The daily basis, if elected, shall be at the rate of 1/30th of the total earned charges determined under the rule of 78ths for that month in which prepayment occurs times the number of days which follow the prepayment date to the next scheduled payment date;~~

~~(ii) Licensees electing the 15-day rule are entitled to earned charges under the rule of 78ths for the month in which prepayment occurs provided the prepayment date is 16 days or more after the preceding regularly scheduled payment date;~~

~~(iii) Licensees are prohibited from using both methods.~~

~~(c) Licensees who elect to use the 15-day rule in determining the refund due a borrower under the provisions of (8)(b)(ii) above may use the following formula in determining the service charge due from borrowers who repay any loan contract within 15 days or less from the date the loan is made:~~

~~(i) lenders are authorized to divide the original add-on charge by the number of months in the contract period of the original term of loan. If a first payment extension was made, that charge is to be entirely refunded if it has not been earned by elapse of time; if earned, the 15 days or less is determined from the date which is one month prior to the first scheduled payment;~~

~~(ii) whenever the resulting quotient is less than \$2, the lender may collect \$2 as a minimum service charge.~~

~~(d) a borrower who prepays one whole installment or more in advance shall be entitled to a refund credit of unearned charges for such prepayment, if the loan contract is repaid within the time allowed in its original terms. Such refund shall be computed by subtracting from the original add-on charge as great a proportion of such charge as the sum of all monthly balances as originally contracted for. Monthly balances are those on the date of origination and on the consecutive scheduled monthly payment dates of the original loan contract;~~

~~(9) (8) Licensees shall interpret 32-5-301(2), MCA, of the Act "only once" to mean on the same default; i.e., a borrower who defaults in one or more payments may be subject to a penalty of 5% of as specified in 32-5-301(2), MCA, for each payment in default;~~

~~(10) remains the same, but is renumbered (9).~~

AUTH: 32-5-401, MCA

IMP: 31-1-106, 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is being amended to remove archaic language "such" and "be," which are no longer used in rule drafting. The term "cost" is being removed and the term "interest" is being added since the Montana Consumer Loan Act (Act) refers to "interest" in 32-5-301(1), MCA. The remainder of 32-5-301, MCA, refers to "fees" but does not use the term "cost." So the rule must be amended to make the terminology consistent with the terminology used in the Act.

In the days before calculators, loans were computed on set numbers of days to aid in ease of calculation of interest. For purposes of calculating interest, a month was 30 days and a year was 360 days. This allowed for more simple interest calculations. However, since the advent of ubiquitous hand-held calculators, there really is no reason for calculating interest other than on actual days. In addition, in October 2010 the voters of Montana passed Ballot Initiative No. 164 (I-164). I-164 amended 32-5-301(1), MCA, of the Act to read: "a licensee may contract for and receive interest on any loan of money. Such interest, including fees and charges incurred in the making of the loan but excluding the fees authorized in subsections (2) and (3), may not exceed 36% per annum." The rate cap was effective on all consumer loans originated on or after January 1, 2011.

If a company uses a 30/360-day year since I-164 took effect, it could charge and collect more interest that is allowed by I-164. On March 11, 2011, the division issued a memorandum cautioning licensees that the effective interest rate (the interest rate that is actually charged on a given loan) must be consistent with the stated interest rate (the interest rate disclosed by the terms of the contract). For

these reasons, references to 30/360 calculations for interest on loans are being removed and replaced by actual days.

Subsections (7)(a) and (b) of the rule are being deleted because they relate to an anachronistic method of calculating interest. In the past, interest was calculated on a 30-day month and any payment of longer than 30 days presented a problem for purposes of calculating the interest due. Now interest is calculated daily so these sections are no longer needed.

Section (8) is being deleted because it relates to two concepts that no longer exist under the Act: precomputed loans and the rule of 78ths. Before 2007, the Act contemplated that consumer loans would be made on an add-on interest basis. In fact, until the mid-1980s most loans were made on an add-on interest basis. In an add-on loan, the amount of interest owed over the life of the loan was precomputed and added to the principal amount due. Sometimes the loans were called precomputed loans.

If the loan was paid off early by the borrower, the borrower would receive a refund of interest based on the rule of 78ths. The rule of 78ths was a set formula that front loaded interest early in the term of the loan so that a proportionately greater amount of interest was collected early in the loan than at the end of the loan. If a precomputed or add-on loan was paid according to the contractual terms, the rule of 78ths had no impact on borrowers. However, if a borrower paid off a precomputed or add-on loan early, the borrower would pay more interest under the rule of 78ths than under a simple interest basis.

The rule of 78ths was a convenient method to calculate refunds of interest due to borrowers in the days before computers and personal calculators because it converted to a chart the formula used to determine the amount to be collected in any given month that the loan was outstanding. But it also led to confusing issues: if the borrower repaid the loan 10 days into the month, could the lender collect the charge for the entire month or not? With the rise of computers and hand held calculators, most lenders have switched from precomputed loans to simple interest loans, turning loans made on add-on interest and the rule of 78ths into anachronisms. In 2007, all references to add-on or precomputed loans and the rule of 78ths were removed from the Act. Therefore, in this amendment, all references to precomputed or add-on loans and the rule of 78ths, and other various rules related to the application of the rule of 78ths, are being deleted from the rule.

The change in (8) is being made because it makes the rule clearer and more consistent with the statute. The actual language of 32-5-301(2), MCA, is: "The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once." The reference to a fee of 5% is being deleted because the penalty is the greater of \$15 or 5%, not to exceed \$50. The amended language is intended to make clear that the penalty described in 32-5-302(2), MCA, may be imposed once for each default.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov), and must be received no later than 5:00 p.m., April 1, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., April 1, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on the number of existing consumer loan licensees which is 43.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>x. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail, e-mail, and telephone on January 9, 2013.

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State February 19, 2013.